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Of Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

ESTATE OF STACY W. KENNY, fka PATRICK W. KENNY, by and through Barbara H. Kenny, Personal Representative, BARBARA H. KENNY and CHRISTOPHER KENNY,

Plaintiffs,

v.

Kraig Akins, Richard A. "R.A." Lewis, Robert Rosales, Robert Conrad, Richard L. Lewis and City of Springfield,

Defendants.

Defendants deny each and every allegation of plaintiffs' Amended Complaint, except as admitted in this answer.

1.

Defendants admit that so long as there are federal claims, jurisdiction and venue are proper.

Page 1 - **DEFENDANTS KRAIG AKINS, RICHARD A. "R.A." LEWIS, ROBERT ROSALES, ROBERT CONRAD, RICHARD L. LEWIS and CITY OF SPRINGFIELD'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' AMENDED COMPLAINT**

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2.

Defendants admit that defendant City of Springfield is an Oregon municipal corporation and a public body liable for tortious conduct of its agents and employees to the extent such liability is imposed by ORS 30.265; that the individually named defendants were and are employees of the City of Springfield, acting under color of law and within the course and scope of their employment; that at or near the time and place alleged in the Complaint, Officer Akins initiated a lawful traffic stop after seeing Stacy Kenny commit driving violations; that Stacy Kenny initially stopped the vehicle, but then after Officer Akins got out of his patrol car, Stacy Kenny threw a sound-making device at him and then unlawfully drove away from the scene of the traffic stop; that Officer Akins radioed he was in pursuit and that Stacy Kenny again stopped the vehicle.

3.

Defendants admit that this cycle repeated; that during these stops Stacy Kenny was given numerous lawful instructions by Officer Akins, which were not followed; that during one of the stops Stacy Kenny activated a loud air horn and then unlawfully drove away from the traffic stop, resulting in further vehicle pursuits.

4.

Defendants admit Stacy Kenny eventually again stopped the vehicle and that this time Sgt. Lewis parked his patrol car a few feet in front of Kenny's stopped vehicle and that Officer Akins parked a few feet behind Kenny's stopped vehicle.

5.

Defendants admit that Officers Rosales and Conrad also arrived at the scene.

6.

Defendants admit Stacy Kenny continued to refuse lawful instructions by one or more officers, refused to get out of the vehicle, activated a loud air horn, physically struggled with and assaulted officers at the scene by slugging them; that during the struggle tasers were twice used by

officers to no apparent effect; and that Stacy Kenny again drove away from the scene, smashing into and driving around Sgt. Lewis's patrol vehicle.

7.

Defendants admit that when Stacy Kenny drove away from the scene, Sgt. Lewis was mostly inside the passenger compartment; that he was unrestrained with the passenger door open; and that he was thrown around inside.

8.

Defendants admit that Stacy Kenny drove away at a very high rate of speed, that Sgt. Lewis ordered him to stop or that they would both be killed; that Kenny refused to stop; that Kenny began to veer across the road into oncoming traffic and toward trees that he was likely to impact at a high rate of speed; that Sgt. Lewis correctly and reasonably believed that his life was in danger because of Stacy Kenny's actions, and that Sgt. Lewis fired his service weapon multiple times, resulting in Stacy Kenny's death.

9.

Defendants admit Kenny's vehicle crashed into one of the trees, veered back across the road and through a fence and only came to a stop after impacting with a parked vehicle and that Sgt. Lewis sustained personal injury.

10.

Defendants admit the Interagency Deadly Force Investigation Team (IDFIT) conducted an independent investigation of the incident; that the Lane County District Attorney found the force lawful; and that Defendant Chief Richard L. Lewis convened a Use of Force Review Board to conduct an internal administrative review of the incident that found the force consistent with Springfield Police policy and Oregon law.

11.

Defendants deny each and every allegation of plaintiffs' complaint for the reasons that they are either not true; that they are improper allegations of law, opinions, or argument; or for the reason

that as of this date, defendants do not have sufficient information to form a belief as to the truth or falsity of the allegations.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF FIRST AFFIRMATIVE DEFENSE, Defendants allege:

12.

Some of plaintiffs' injuries and death took place while plaintiff Stacy Kenny was engaged in conduct that at the time constituted a Class A or Class B felony under the laws of the State of Oregon, and that because such conduct was substantial factor contributing to the injuries or death, plaintiffs' claims are barred.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF SECOND AFFIRMATIVE DEFENSE, Defendants allege:

13.

Some or all of plaintiffs' claims fail to state a claim for relief.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF THIRD AFFIRMATIVE DEFENSE, Defendants allege:

14.

The conduct of any City of Springfield employee or individual defendant was privileged, justified and reasonable under the circumstances.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF FOURTH AFFIRMATIVE DEFENSE, Defendants allege:

15.

The individual defendants are entitled to qualified immunity.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF FIFTH AFFIRMATIVE DEFENSE, Defendants allege:

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16.

Plaintiffs' state law claims are subject to the conditions, limitations and immunities contained in the Oregon Tort Claims Act, ORS 30.260, *et seq.*, including, among other things, the limitation of plaintiffs' damages, if any, as set forth in the Tort Claims Act.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF SIXTH AFFIRMATIVE DEFENSE, Defendants allege:

17.

Plaintiffs' claims should be barred or reduced because the cause of plaintiff Stacy Kenny's injuries and death as alleged in the Complaint were caused by plaintiff Stacy Kenny's own unreasonable and unlawful actions in one or more of the following particulars:

- a. In failing to follow lawful instructions by the officers during any of the traffic stops;
- b. In physically fighting with the officers; and
- c. In driving away from the scene of the traffic stop and doing so in such a manner and speed as to cause Sgt. Lewis to reasonably believe he was in danger of serious physical injury or death.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF SEVENTH AFFIRMATIVE DEFENSE, Defendants allege:

18.

Plaintiffs, by and through the actions of Stacy Kenny, were negligent in one or more of the following particulars which caused some or all of plaintiff Stacy Kenny's injuries:

- a. In failing to follow lawful instructions by the officers during any of the traffic stops;
- b. In physically fighting with the officers; and
- c. In driving away from the scene of the traffic stop and doing so in such a manner and speed as to cause Sgt. Lewis to reasonably believe he was in danger of serious physical injury or death.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF EIGHTH AFFIRMATIVE DEFENSE, Defendants allege:

19.

Plaintiffs fail to state claims for punitive damages.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF NINTH AFFIRMATIVE DEFENSE, Defendants allege:

20.

Defendants Chief Richard L. Lewis and City of Springfield are entitled to bifurcation at trial of Plaintiffs' Second Claim for Relief and Fifth Claim for Relief Paragraph 9.3 from Plaintiffs' First, Third, Fourth, and Fifth Claim Paragraph 9.4.

FOR A FURTHER SEPARATE ANSWER AND BY WAY OF TENTH AFFIRMATIVE DEFENSE, Defendants allege:

21.

Defendants Akins, RA Lewis, Rosales and Conrad are entitled to bifurcation at trial of Plaintiffs' punitive damage claims from the remainder of the claims against them.

WHEREFORE, having fully answered plaintiffs' Amended Complaint, Defendants pray that it be dismissed with prejudice, for entry of judgment in Defendants' favor and for an award of costs and disbursements incurred herein.

Defendants demand trial by jury.

Respectfully submitted this 17th day of June 2020.

KRAEMER & LEWIS

By: s/ Steven A. Kraemer
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Of Attorneys for Defendants